# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

**CWP No.690/2002**

**Reserved on.27.4.2007**

**Decided on.1.6.2007**

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**Neeraj Talwar** **…Petitioner.**

**Versus**

**Municipal Council, Dalhousie & another.** **…Respondents**

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*Coram*

**The Hon'ble Mr. Rajiv Sharma, J.**

*Whether approved for reporting ?*[1]*.No.*

**For the petitioner :** **Mr. Dushyant Dadwal, Advocate**

**For the respondent No.1** **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakashi Sharma, Deputy Advocates General.**

**For the respondent No.1** **Mr. Neeraj Kumar Sharma, Advocate.**

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**Rajiv Sharma, J.**

The brief facts necessary for the adjudication of this petition are that the petitioner's father had been issued notice on 11.11.1999 calling upon him to restrain from raising unauthorized construction and remove the same. Shri Ramesh Talwar, the father of the petitioner did not file any reply to the show cause notice issued on 11.11.1999. The Council had decided in its meeting held on 27.6.2001 to demolish the unauthorized construction raised by the petitioner. Consequently the notice was issued by the Executive Officer of the Council on 5th July, 2001. The father of the petitioner Sh. Ramesh Talwar had challenged that decision before the Secretary (UD)-cum-Financial Secretary and the same was dismissed on 21.5.2002. Against the decision dated 5th July, 2001 the petitioner had

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

filed the appeal before the learned District Judge, Chamba, which was dismissed by the learned District Judge on 29.11.2001.

Mr. Dushyant Dadwal, Advocate appearing on behalf of petitioner had strenuously argued that the petitioner has not been served with notice as per law.

Mr. Neeraj Kumar Sharma, Advocate appearing on behalf of the respondent-Council had supported the order passed by the learned District Judge dated 29.11.2001 as well as the memo issued on 16.3.2002.

I have heard the parties and perused the record.

The petitioner's father had been served with a notice and the same has to be viewed in terms of section 234 of H.P. Municipal Act, 1994 which reads as under:

> **"Whenever it is provided by this Act that any notice may be given to the owner or occupier of any land or building, and the owner and occupier are different persons, such notice shall be given to one of them primarily liable to comply with such notice, and in case of doubt to both of them:**
> **Provided than in any such case, where there is no owner resident within the municipal area, the delivery of such notice to the occupier shall be sufficient."**

It is evident from the language employed in section 234 of the H.P. Municipal Act, 1994 that the notice is required to be issued to the owner or occupier of any land. It has come in the reply that the petitioner's father was the occupier of the land to whom the notices have been issued from time to time by the Council. Mr. Ramesh Talwar to whom the notices had been issued had chosen not to file any reply. The first notice was issued to Ramesh Talwar on 11.11.1999, but the same was not replied to by him. The resolution was passed by the Council on 27.6.2001 and consequently the Executive Magistrate had passed the

order dated 5th July, 2001. The appeal preferred by Shri Ramesh Talwar against the order dated 5.7.2001 before the Secretary (UD)-cum-Financial Commissioner to the Government of H.P. had been dismissed. The petitioner had filed an appeal before the learned District Judge under section 212 of the H.P. Municipal Act, which had been dismissed on 29.11.2001. The orders passed by the competent authorities are in conformity with law. The judgment of the learned District Judge is also in conformity with law. The learned District Judge has extensively gone into the various provisions of the H.P. Municipal Act, 1994 and on that basis had come to a definite conclusion that the construction raised by the petitioner was unauthorized. The learned District Judge had also perused the record while giving his findings to the effect that the construction raised by the petitioner was unauthorized.

The upshot of the above discussion is that the construction raised by the petitioner along with his father Sh. Ramesh Talwar is unauthorized. The notices issued under section 234 of the H.P. Municipal Act, 1994 were in accordance with law and the petitioner cannot be permitted to take shelter that he was not served with the notices.

Accordingly the writ petition is dismissed with no order as to costs and the interim order dated 30.5.2002 is vacated.

**( Rajiv Sharma), Judge**

June 1, 2007
**Awasthi**